

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Wilmington, Delaware 19801-3733
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Neil F. Dignon, Esquire
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512 East Market Street
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Ronald G. Rucker
79 West Mill Station Drive
Newark, Delaware 19711

**Re: PHH Mortgage Services Corporation, Assignee of
Dexsta Federal Credit Union, a Federal Credit Union
v. Ronald G. Rucker
C.A. No. 06L-02-007 RRC**

Submitted: March 29, 2007

Decided: April 19, 2007

On Plaintiff's Motion for Summary Judgment.

GRANTED.

Dear Counsel:

Plaintiff filed a complaint on February 2, 2006 alleging that Defendant owes Plaintiff "the principal sum of \$144,950.70 together with interest after September 1, 2005, together with late charges totaling \$365.32, together with Plaintiff's reasonable attorney's fees and the costs of this action, and other amounts due under the Mortgage, all to be levied out of the premises described in the Mortgage." The face of the complaint demanded that Defendant answer the allegations in the complaint by affidavit pursuant

to 10 *Del. C.* § 3901(a).¹ The Plaintiff also filed a copy of the mortgage with the complaint pursuant to § 3901(c).

Defendant filed an answer to the complaint on March 6, 2006, essentially admitting his failure to make monthly payments on his mortgage. Defendant's answer contends he owes \$144,546.85 together with late charges of \$260 (a total of \$403.85 less than Plaintiff claims), however, he did not file an affidavit of merit as required by § 3901(a). As a consequence of Defendant's failure to comply with § 3901(a), Plaintiff's allegations are deemed admitted.² Therefore, Plaintiff's motion for summary judgment is **GRANTED**.

Plaintiff shall submit a proposed order implementing this decision on or before May 18, 2007. The oral argument and the pretrial conference scheduled for April 20, 2007 are cancelled.³

IT IS SO ORDERED

oc: Prothonotary

¹ 10 *Del. C.* § 3901(a) states that "in all actions of scire facias on . . . mortgages, the plaintiff may specially require the defendant . . . to answer any or all allegations of the complaint by an affidavit setting forth the specific nature and character of any defense and the factual basis therefore, by the specific notation upon the face of the complaint that those allegations must be answered by affidavits."

² 10 *Del. C.* § 3901(d) ("If the plaintiff . . . complies with this section, and the defendant . . . fails to respond to the designated allegations by affidavit filed with the answer . . . the designated allegation will be deemed admitted, and default judgment may be entered thereon, in the discretion of the Court and upon motion by the plaintiff)."

³ Defendant requested a continuance of this case in his opposition to Plaintiff's motion for summary judgment filed on March 29, 2007. However, he did not set forth sufficient reasons for a continuance and that application is therefore denied. The Court additionally received a letter from Defendant dated April 4, 2007 alleging "mail tampering" and "unlawful monitoring of the telecommunications." The Court will take no action with respect to that letter.